IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 7575 of 2005

Between:

M/s. Srinivasa Constructions Company,

Plot No. 50, Road No.2, Green Hills Colony,

Saroornagar, Hyderabad, rep. by its Manager,

Mr. L. Anand.

..... PETITIONER

AND

1. The Commissioner of Commercial Taxes,

Government of Andhra Pradesh, Nampally,

Hyderabad

2. The Assistant Commercial Tax Officer,

Commercial tax Check Post, Thana,

Chittoor District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or order or direction decalring:- a) that the diesel driven screw compressor is not a motor vehicle for the purpose of Motor Vehicle Act, 1988 as it is not mounted on rubber tyre wheels and consequently there is no liability to tax under the A.P. Tax on Entry of Motor Vehicles into Local Areas Act, 1996 and consequently declare the circular of the 1st Respondent dated 15-4-2004 as not applicable to the equipment under detention. b) declare the detention order and the notice issued by the Respondent dated 31-3-2005 as arbitrary, illegal, without authority of law and without jurisdiction and the demand of entry tax @ 16 % on the value of the equipment under A.P. Tax on Entry of Motor Vehicles into Local Areas Act, 2001 is contrary to the circular of the 1st Respondent dated 5-11-2002 and set a side the same and consequently direct the 2nd Respondent to release the detained consignment forthwith to the petitioner and also award costs for the illegal detention made.

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court made the following:

ORDER: (Per Hon'ble Sri Justice G.Bikshapathy)

The writ petition is filed seeking writ of Mandamus on the following directions:

a) that the diesel driven screw compressor is not a motor vehicle for the purpose of Motor Vehicle Act, 1988 as it is not mounted on rubber tyre wheels and consequently there is no liability to tax under the A.P. Tax on Entry of Motor Vehicles into Local Areas Act, 1996 and consequently declare the circular of the 1st Respondent dated 15-4-2004 as not applicable to the equipment under detention.

b) that declare the detention order and the notice issued by the second respondent dated 31-3-2005 as arbitrary, illegal, without authority of law and without jurisdiction and the demand of entry tax @ 16 % on the value of the equipment under A.P. Tax on Entry of Motor Vehicles into Local Areas Act, 2001 is contrary to the Circular of the 1st Respondent dated 5-11-2002 and set aside the same and consequently direct the 2nd Respondent to release the detained consignment forthwith to the petitioner and also award costs for the illegal detention made.

2. It is the contention of the petitioner that the compressor is not liable for entry tax, as it does not fall within the definition of A.P. Tax on Entry of Motor Vehicles into Local Areas Act, 1996, therefore, the demand itself is illegal and without jurisdiction.

3. On the other hand, the learned Government Pleader submits that in the order of

the earlier writ petition in W.P.No.3832 of 2005 dated 03.3.2005, it was found 8% entry tax is liable to pay by the purchasers of the compressor.

4. After hearing the learned counsel for the petitioner and the learned Government Pleader, we dispose of the writ petition with the following directions:

i) The respondents shall release the lorry bearing registration No.TN 25 5653 together with diesel driven screw mounted compressor on furnishing undertaking that the petitioner shall not alienate or create any charge over the same;

ii) That the petitioner shall undertake to pay the tax, if at all levied, after the enquiry is completed in respect of notice issued on 31.03.2005.

There shall be no order as to costs.

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G.BIKSHAPATHY,J.

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P.S.NARAYANA,J.

Date: 07th April 2005.

BSB/STP

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner of Commercial Taxes,

Government of Andhra Pradesh, Nampally,

Hyderabad

2. The Assistant Commercial Tax Officer,

Commercial tax Check Post, Thana,

Chittoor District.

3. Two CCs to the Government Pleader for Commercial Taxes,

High Court of A.P., Hyderabad (OUT).

4. Two CD copies

5. 1 CC to MR.SRINIVASA REDDY

*Form-NIC-OGS/WP{**TRT**}*